

MOHAJERIAN INC
AL MOHAJERIAN, CSBN 182013
AARON G. CAPPS, CSBN 215803
A Professional Law Corporation
1925 Century Park East, Suite 350
Los Angeles, California 90067
Tel: (310) 556-3800/Fax: (310) 556-3817

FOR COURT USE ONLY

Attorney for Defendant Ronsin Photocopy, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SECOND IMAGE, INC., a California
Corporation

Plaintiff(s),

vs.

RON SIN PHOTOCOPY, a California
Corporation; CHRISTINA SANCHEZ, an
individual ; and DOES 1 through 10

Defendant(s).

CASE NO.: C075242

REPLY TO OPPOSITION OF PLAINTIFF
TO DEFENDANT RONSIN PHOTOCOPY,
INC.'S MOTION TO DISMISS PURSUANT
TO RULE 12(b)(1), RULE 12(b)(6) OR, IN
THE ALTERNATIVE, TO TRANSFER
VENUE FOR CONVENIENCE (28 U.S.C. §
1404 (a))

DATE: February 27, 2008

TIME: 9:00 a.m.

DEPT: 3

Honorable Judge Phyllis J. Hamilton

Defendant Ronsin Photocopy, Inc. submits the following reply to Plaintiff Second
Image, Inc.'s opposition to its Motion to Dismiss.

1. PLAINTIFF HAS NOT MET THE REQUIRED ELEMENTS OF THE CFAA

Plaintiff's opposition focuses on the fact that Plaintiff has made the conclusory allegation
that it suffered losses and damages in excess of \$5,000. However, as stated previously, Title 18,
U.S.C. Section 1030 is a criminal statute. As such, it is narrowly construed, *Dowling v. United*
States, 473 U.S. 207, 213 (1985). The CFAA is narrowly construed and the meaning of "loss" is
defined by statute and therefore in order for there to be a cause of action under the CFAA loss as

defined by the CFAA must be alleged. Loss has consistently meant a cost of investigating or remedying damage to a computer, or a cost incurred because the computer's service was interrupted. *Nexans Wires S.A. v. Sark-USA, Inc.* 319 F.Supp.2d 468, 475 (S.D.N.Y.2004), *aff'd*, 166 Fed.App. 559 (2d Cir.2006).

Plaintiff's Complaint is devoid of any allegations regarding a loss as defined under the CFAA. Plaintiff's have made a conclusory allegation of a \$5,000 loss. This does not meet the statutory requirements of the CFAA. In a Rule 12(b)(6) motion, the court need not accept as true conclusionary allegations or legal characterizations. Nor need it accept unreasonable inferences or unwarranted deductions of fact. *In re Delorean Motor Co.* (6h Cir. 1993) 991 F.2d 1236, 1240; *Transphase Systems, Inc. v. Southern Calif. Edison Co.* (CD CA 1993) 839 F.Supp. 711, 718.

Thus, Plaintiff has not, and cannot, properly plead an action based on the CFAA in this action, therefore this cause of action should be dismissed without leave to amend.

2. PLAINTIFF HAS NOT MET THE REQUIRED ELEMENTS OF SECTION 43(A) OF THE LANHAM ACT, 15 U.S.C. SECTION 1125(a)

Plaintiff does not address Defendant's contention that, according to face of the FAC, Plaintiff Second Image provides services exclusively in California. (FAC para.2) Thus, according to a allegations contained in the FAC, it would be impossible for Defendant Ronsin, which allegedly services clients throughout the United States, to influence the purchasing decision of potential customers of Plaintiff Second Image in interstate commerce (outside of California) as there are no interstate customers of Plaintiff Second Image.

Any alleged misconduct engaged in by Ronsin in connection with its "nationwide client base" could not possibly be a material deception as these customers would not be "potential customers" of Plaintiff Second Image. Ronsin cannot influence the purchasing decision of a potential Second Image client via interstate commerce because, according to the facts allegations

1
2 contained in the FAC, Plaintiff Second Image does not participate in interstate commerce.

3 Thus, Plaintiff has failed to meet the elements required under Section 43(a) of the Lanham
4 Act, therefore this cause of action should be dismissed without leave to amend.
5

6 **3. CONCLUSION**

7 For the foregoing reasons, including the reasons listed in the Motion to Dismiss, this matter
8 should be dismissed without leave to amend.
9

10 Date: February 12, 2008

11 **MOHAJERIAN INC**

12
13
14 By: 

15 AL MOHAJERIAN
16 AARON G. CAPPS
17 Attorneys for Defendant RONSIN
18 PHOTOCOPY, INC.
19
20
21
22
23
24
25
26
27
28

MOHAJERIAN INC
A PROFESSIONAL LAW CORPORATION
1925 CENTURY PARK EAST, SUITE 350
LOS ANGELES, CALIFORNIA 90067
TEL: (310) 289-3800 FAX: (310) 556-3817